



David B. Cohen
Mayor

CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

Michael J. Kruse, Director

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Public Hearing Date: October 10, 2006
Land Use Action Date: December 5, 2006
Board of Aldermen Action Date: December 18, 2006
90-Day Expiration Date: January 8, 2006

TO: Board of Aldermen

FROM: Michael Kruse, Director of Planning and Development
Nancy Radzevich, Chief Planner
Jean Fulkerson, Principal Planner

DATE: October 6, 2006

SUBJECT: Supplemental Memo Petition #284-06 MARC S. PRICE & HILLARY K. PRICE
petition for a SPECIAL PERMIT/SITE PLAN APPROVAL for a grade change(s) in
excess of three feet to construct a by-right single-family house at 6 KESSELER WAY,
Ward 8, on land known as Sec 82, **Blk 37**, Lot 86, containing approximately 15,662 sf of
land in a district zoned SINGLE RESIDENCE 3.

CC: Mayor David B. Cohen

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will consider in its discussion at a subsequent Working Session.

EXECUTIVE SUMMARY

The petitioners are seeking a special permit for a greater than 3 foot grade change for a lot located within the subdivision known as Kessler Woods, in the Oak Hill neighborhood. A 3,558 sq. ft. single family dwelling is proposed for the currently undeveloped lot.

6 Kessler Way Land Use

- Land Use
- Single Family Residential
 - Multifamily Residential
 - Commercial
 - Industrial
 - Mixed Use
 - Vacant Land
 - Golf Course
 - Open Space
 - Private Educational
 - Nonprofit Organizations
 - Public Housing
 - Tax Exempt

- Newton Boundary
- Property Boundaries
- Ponds/Rivers
- Streams
 - / Intermittent
 - ∨ Perennial

Pond Names

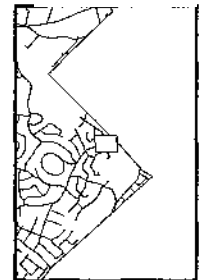
Buildings

Street Names

Stream Names

Address Numbers

1" : 133.2'

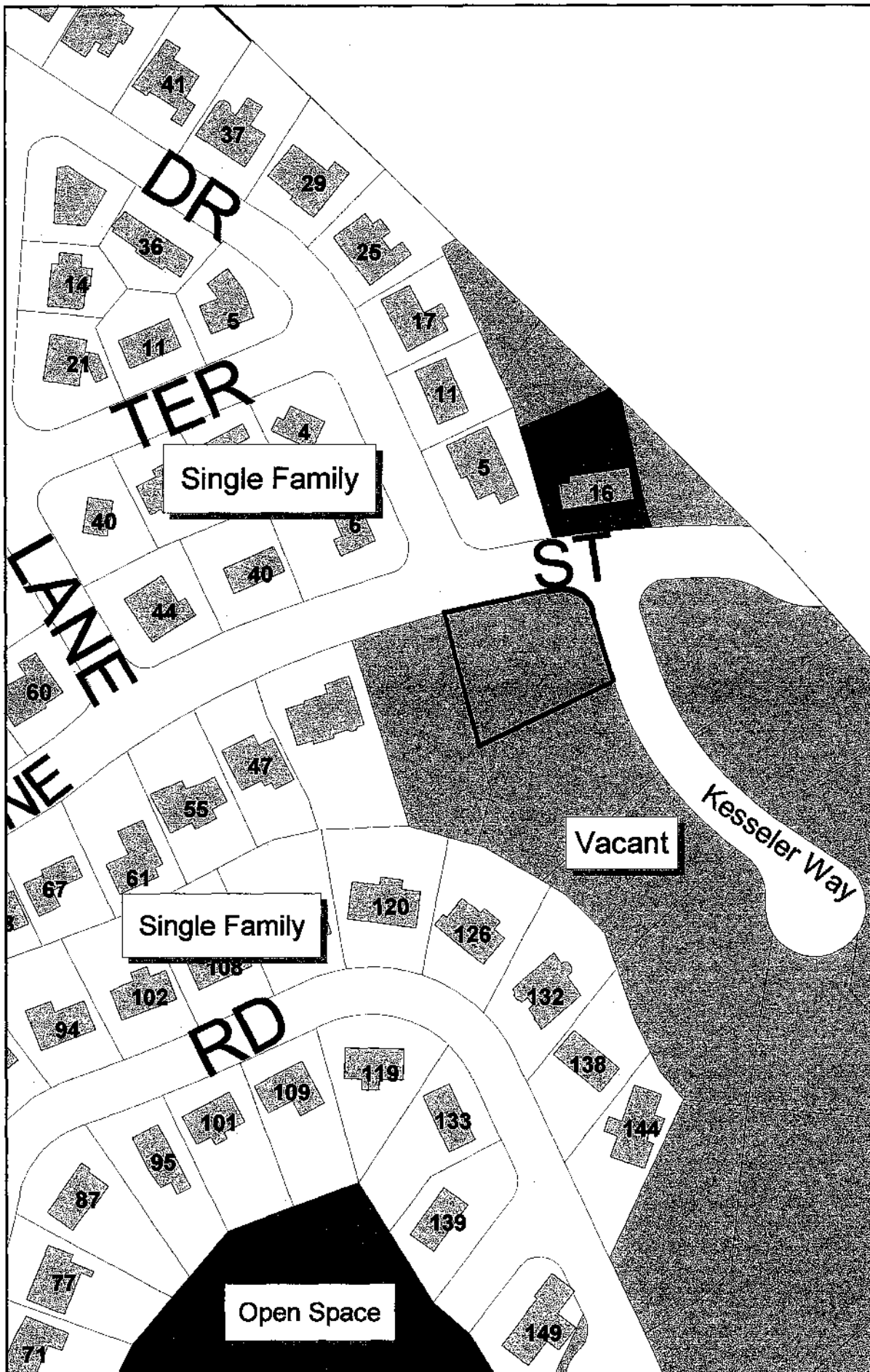


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23 Apr 2008



6 Kessler Way Zoning

Zoning Districts

- Single Res. 1
- Single Res. 2
- Single Res. 3
- Business 1
- Business 2
- Business 4
- Business 5
- Un. Manuf.
- Manuf.
- Multi-Res. 1
- Multi-Res. 2
- Multi-Res. 3
- Multi-Res. 4
- Mixed Use 1
- Mixed Use 2
- OS/Rec.
- Public Use

Newton Boundary

Property Boundaries

Ponds/Rivers

Streams

Intermittent

/V Perennial

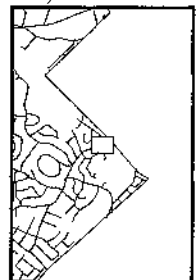
Pond Names

Buildings

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Stream Names

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THE TOWN OF BROOKLINE
PLANNING DEPARTMENT
100 STATE STREET, SUITE 200
BOSTON, MASSACHUSETTS 02109
(617) 552-3000
WWW.BROOKLINE.MA.GOV



I. ELEMENTS OF THE PETITION

The petitioners are requesting a special permit to alter the grade of the subject property by more than 3 feet. The lot has a central depression, created in part by the installation of the roadway at a higher grade than the lot. The petitioners will be altering the grade by more than 3 feet by filling portions of the lot, rather than excavating, in order to allow for the construction of a new single-family residence. The grade will be altered by more than 3 ft. on over 9,790 sq. ft. of the lot, or 62.5 percent of the lot area, with a maximum grade change of 7 ft. No other relief is being sought.

II. BACKGROUND

The public hearing for the petition was opened on September 12, 2006. The hearing was continued to October 10, 2006, to allow the petitioner to provide certain information as requested by the members of the Land use Committee

III. ADDITIONAL ANALYSIS

A. Comments from Engineering Department

The Associate City Engineer has completed his review (*See ATTACHMENT "A"*) and indicates that the drainage system is properly designed for the site.

B. Comments from Director of Urban Forestry

The petitioner's representatives met with the Director of Urban Forestry on October 3, 2006 to review the petitioner's landscape plans with respect to the City's Tree Preservation Ordinance. The Director of Urban Forestry notes that several trees that are to remain on the site are very close to the construction. The Tree Preservation Ordinance requires that no construction activity take place within the dripline of the trees and that they be protected from the construction. ***The Director of Urban Forestry will require a written statement, and/or plan from a Certified Arborist as to how these trees will be protected.***

The Director of Urban Forestry also noted that there are 153 diameter inches being removed, and only 55 caliper inches are being planted, leaving an outstanding deficit of 98 inches. The petitioner has two options as to how to make up this deficit. Additional trees can be planted on the site, or along the public roadway at locations agreed upon with City. Alternatively, the petitioner may provide a payment of \$400 for every 2.5 inches not planted. The petitioner must provide a statement to the Director of Urban Forestry indicating how the deficit will be resolved. ***If the petitioners are proposing to plant additional trees on site to make up part of the deficit, they should file a revised landscape plan, prior to the working session.***

The Director of Urban Forestry will consider the application for compliance with the Tree Preservation Ordinance incomplete until the above information is provided and approved.

C. Extent of Site Grading

The petitioner was asked to provide additional information as to the extent of the site grading and for the total volume of fill proposed for the site. A revised plan titled "" Area of More than 3' Grade Change" dated October 4, 2006, provided by the petitioner, shows that of the entire lot, 1,322 sq. ft. is to remain natural, 4,558 sq. ft. will have less than a 3 ft. grade change, and 9,782 sq. ft. will have a grade change of 3 ft. or greater. (*See Attachment "B"*). The petitioner did not state the volume of fill proposed for the site.

D. Location and Size of Driveway

The Land Use Committee asked for additional comments on the proposed location and size of the driveway. The City's Traffic Engineer stated to the Planning Department that the entrance to the driveway is designed appropriately. In the original proposal the width of the proposed driveway was 14 ft., having an overall size of 1,680 sq. ft. and 87.5 ft. in length. The petitioner provided a revised plan of the proposed driveway, dated October 2, 2006 to the Planning Department (*See Attachment "C"*), whereby the overall size of the driveway is reduced by 40 sq. ft. to 1,640 sq. ft., by reducing the depth of the hammerhead turnaround. The width and length of the driveway remain the same.

E. Design Review

The Alderman asked for additional information on the origin and purpose of the Design Review Committee. In March of 2005 C/S Kessler LLC adopted and recorded Protective Covenants for the subdivision known as Kessler Woods. The Protective Covenants declare that any land within the subdivision that is held, sold, or conveyed, will be subject to the conditions of the covenants for the purpose of protecting the value and desirability of the land. One component of the Protective Covenants is a set of Design Standards (*See ATTACHMENT "D"*), against which future designs must be reviewed and approved by a Design Review Committee. Affirmative votes from two out of three members are required for approval.

The Design Review Committee consists of a three person committee made up of a representative from Kessler LLC, Director of Planning and Development for the City of Newton, or his designee, and an architect, engaged by C/S Kessler, LLC. The Design Standards were conceived by the developer.

ATTACHMENTS:

Attachment A: Memo from the Associate City Engineer

Attachment B: Revised Grading Plan

Attachment C: Revised Driveway Plan.

Attachment D: Design Standards

**CITY OF NEWTON
ENGINEERING DIVISION**

ATTACHMENT A

MEMORANDUM

To: Ald. George Mansfield, Land Use Committee Chair.

From: John Daghlion, Associate City Engineer

Re: Special Permit – 6 Kessler Way

Date: September 29, 2006

CC: Lou Taverna, PE City Engineer (via email)
Nancy Radzevich, Chief Planner (via email)
Linda Finucane, Associate City Clerk (via email)
Jean Fulkerson, Planner (via email)

In reference to the above site, I have the following comments for a plan entitled:

6 Kessler Way
Newton, MA

Prepared by: Verne T. Porter, Jr., PLS

Dated: July 13, 2006

Revised 8-7-06

Drainage:

1. The proposed drainage system is properly designed for the City of Newton's 100-year storm event. The system is designed to infiltrate to the maximum extent for the given site, and has provisions for overflow to the overall subdivision's drainage system. This is consistent with the approved Definitive Subdivision approved by the Board of Survey.

Easements:

The applicant needs to be aware of the restrictions of the sight distance easement, as part of the original subdivision.

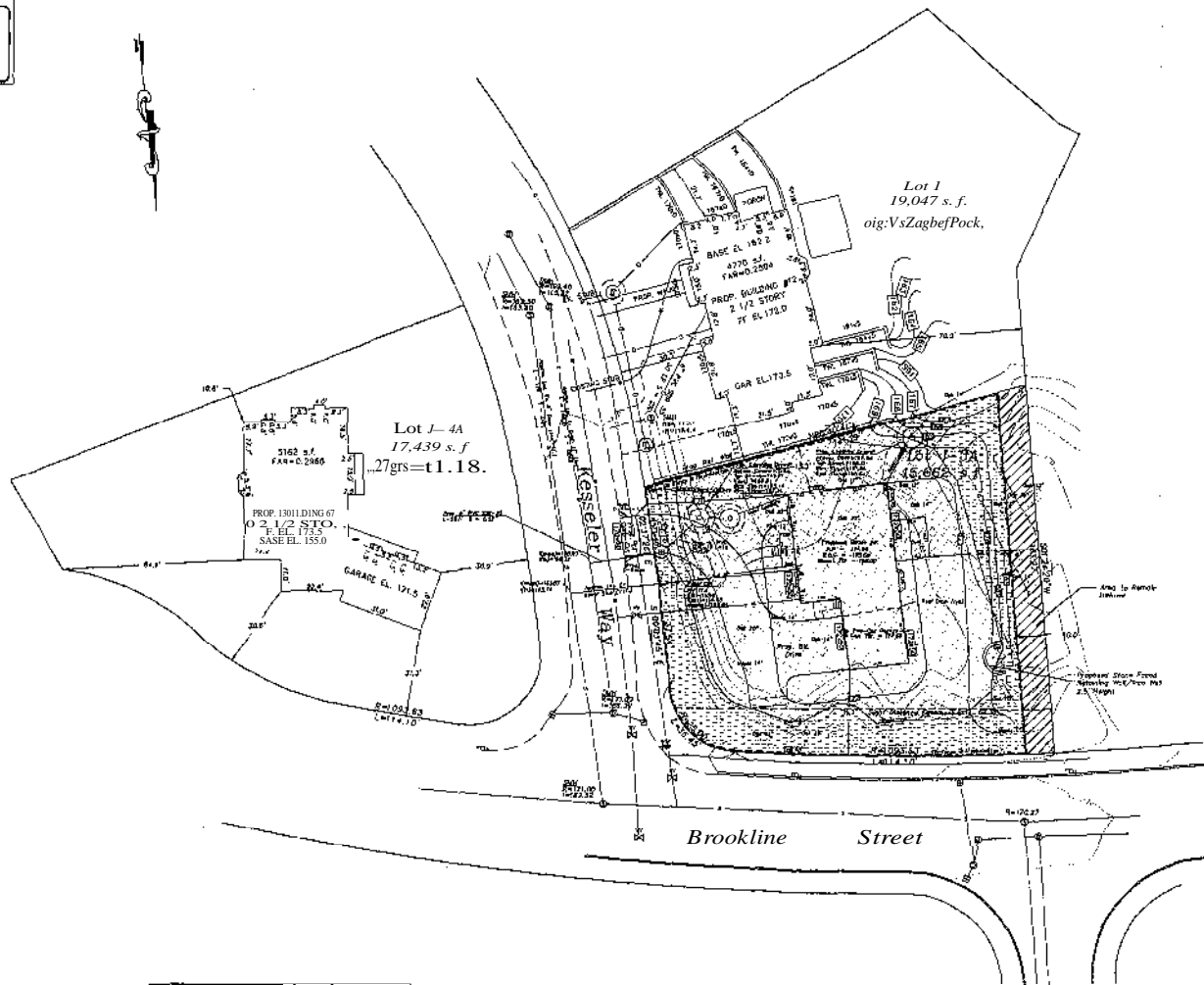
Sewer:

1. The sanitary sewer connection is in conformance for the city's Construction Standards.

General:

1. The contractor is responsible for contacting the Engineering Division and scheduling an appointment 48 hours prior to the date when the utilities will be made available for an inspection of water services, sewer service, and drainage system installation. The utility in question shall be fully exposed for the inspector to view; backfilling shall only take place when the City's Inspector has given their approval.
2. The applicant will have to apply for Utilities Connecting Permit with the Department of Public Works prior to any construction.
3. The applicant will have to apply for a Building permits with the Department of Inspectional Service prior to any construction.
4. Prior to Occupancy permit being issued, an As-Built Plan shall be submitted to the Engineering Division in both digital format and in hard copy. The plan should show all utilities and final grades, any easements and final grading.
5. If a Certificate of Occupancy is requested prior to all site work being completed, the applicant will be required to post a Certified Bank Check in the amount to cover the remaining work. The City Engineer shall determine the value of the uncompleted work.

If you have any questions or concerns please feel free to contact me @ 617-796-1023.



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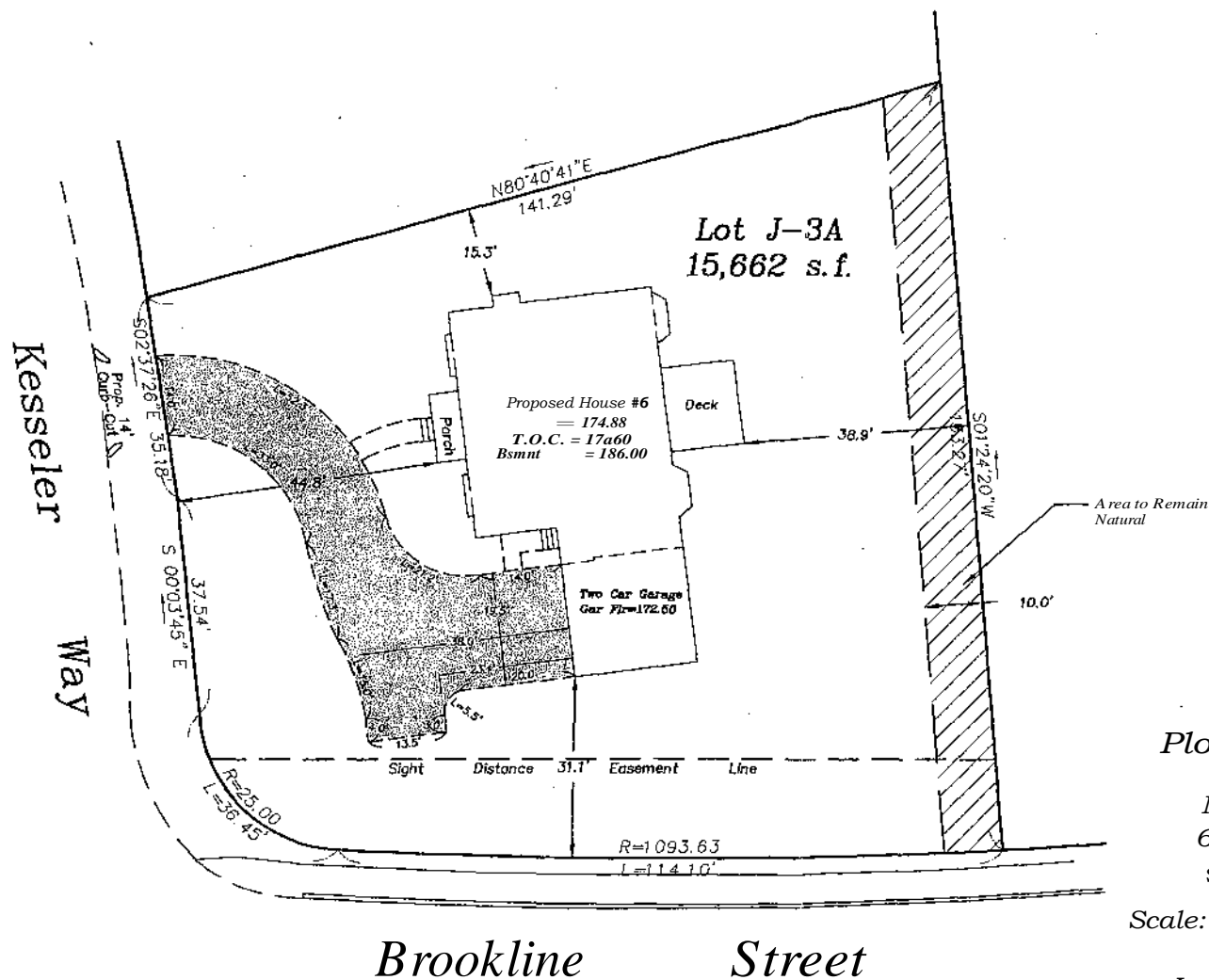
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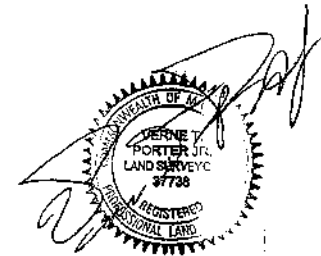
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6 Kessler Way - Newton, Massachusetts	
--Area of More Than 3' Grade Change	
to Accompany the Petition Of Marc Price and Hillary Price Section 82 - Block 37 - Lot 86	
Scale: 1"=20' July 13, 2006 VERNE T. PORTER JR., PLS Land Surveyors - Civil Engineers 354 Elliot Street Newton, Massachusetts 02464	
0 20 40 60 80 100	Design By:
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LL 7 Proposed 14' Drive
Area=1640 sf



Plot Plan of Proposed Drive
to Accompany the Petition of
Marc Price and Hillary Price
6 Kessler Way – Newton, MA
Section 82 — Block 37 — Lot 86

Scale: 1"=20' September 1, 2006
Verne T. Porter Jr., PLS
Land Surveyors Civil Engineers
354 Elliot Street Newton, MA 02464

Revised: Oct. 2, 2006 Drive Reduction

ATTACHMENT C

**KESSELER WOODS
NEWTON, MASSACHUSETTS**

PROTECTIVE COVENANTS



Bk: 44808 Pg: 377 Doc: COV
Page: 1 of 13 03/18/2005 03:10 PM

This Declaration made on the date hereinafter set forth by C/S Kessler, LLC, a Massachusetts limited liability company with an address of c/o Cornerstone Corporation, 725 Canton Street, Norwood, Massachusetts 02062 (hereinafter referred to as the "Declarant").

WITNESSETH

Whereas the Declarant is the Owner of certain land in Newton, Middlesex County, Massachusetts being shown as:

Lots J-1, J-2, J-3A, and J-4A and Lots 1-10 inclusive on a plan entitled "Lot Layout Plan Definitive Plan of Land Kessler Woods in Newton, MA" dated March 17, 2004 as revised July 19, 2004 prepared by Toomey-Munson & Associates, Inc., 89 Access Road, Unit 12, Norwood, Massachusetts 02062 (hereinafter "Plan") as recorded with the Middlesex South Registry of Deeds in Plan Boo 2004, Page 1516 (a copof which is attached hereto as Exhibit A).

PL 1516

(hereinafter referred to collectively as the "Land" and the term "Lot" shall mean any lot shown on the above referenced plans).

Now, therefore, the Declarant hereby declares that the Land shall be held, sold and conveyed subject to the following restrictions and conditions which are for the purpose of protecting the value and desirability of the Benefitted Land as defined below.

A. Definitions

1. "Benefitted Land" shall mean:

The land of the Declarant shown on a plan entitled "Definitive Subdivision Plan," as more particularly described above.

2. "Design Review Committee" shall mean and refer to a three-person committee composed as follows: a representative from C/S Kessler, LLC; the Director of Planning and Development for the City of Newton, or his designee; and an architect, engaged by C/S Kessler, LLC.
3. "Owner" shall mean and refer to the record owner from time to time, whether one or more persons or entities, of fee simple title to any Lot which is part of the Land. Owner shall not mean a Mortgagee of any Lot unless and until such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure or has taken possession of the Lot.

B. Architectural Control

Bernard



**15 Broad Suite 512
Beaton, Massachusetts 02109**

BROOKLINE STREET, NEWTON, MA

1. No building, fence, wall or other structure shall be commenced or maintained on the Land or any portion thereof, nor shall any exterior addition to or change or alteration be made until the plans and specifications showing the nature, kind and shape, height, materials and location of same shall have been submitted to and approved in writing by the Design Review Committee as to harmony of external design and location in relation to surrounding structures and topography including without limitation conformity to Declarant's Design Standards Submission Guidelines and Design Review Submission Criteria (attached as Exhibit B). Simultaneously with the submittal of the above plans, the landscape design plans in connection with construction of a building shall also be submitted and also require the Design Review Committee's review and approval. In the event that the Design Review Committee, or its designee(s) fail(s) to approve or disapprove such design and location within twenty-one (21) days after plans and specifications have been submitted to them, approval will not be required and the requirements hereof will be deemed to have been fully complied with. A decision of any two (2) members of the Design Review Committee within the twenty-one (21) day period shall be binding upon said Committee and shall be considered approval of said Committee. The right of approval reserved to the Declarant, or their designee(s) shall expire on August 1, 2034. Until such time as a notice to the contrary is recorded with the Middlesex South Registry of Deeds, the address of the Declarant is as first set forth above.
2. No structure other than a single-family dwelling of not less than 3000 square feet of habitable space or accessory structure(s), such as, but not limited to, a structure for storage purposes, shall be permitted except on a temporary basis for a specific, limited use, and only with the permission of the Declarant, its successors or assigns.
3. The following uses are not permitted, except with prior written approval of the Declarant or of the Declarant's designee and at the sole discretion of Declarant or Declarant's designee.
 - a. There shall be no permanently installed clothesline which is visible from the street or unscreened from abutting lots.
 - b. There shall be no outside parking or storage of trailers, boats, recreation vehicles, trucks having a gross vehicle weight in excess of 6,000 pounds, or unregistered motor vehicles. Likewise, outside storage of vehicle parts is not allowed.
 - c. There shall be no outside antennae, aerials, satellite dishes, television cameras or other devices for the transmission or reception of electromagnetic signals if any of the same are visible from the street, except for television antennae less than ten feet.
 - d. There shall be no external fuel tanks or fuel storage devices.
 - e. There shall be no trash containers or enclosures which are visible from the street.

f.. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats, or other pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes, or in any number or condition that may be deemed offensive by the Declarant or its designee.

g. No noxious or offensive activity, as determined by the Declarant or its designee, shall be carried on upon any lot nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood.

4. The requirements set forth herein are in addition to and not in lieu of any and all permits, licenses and approvals required by any and all governmental agencies as well as all other restrictions of record.

C. The Land shall not be further subdivided as to create any additional building lots.

D. The Grantee of any lot, and their successors shall cause to have reference made to these Protective Covenants in any subsequent deed or conveyance instrument. Any failure to do so shall not impair the continued applicability of these restrictions.

E. Severability:

Invalidation of any one of these covenants by judgment or court order shall in no way affect any provisions which shall remain in full force and effect.

For Declarant's Title see Deed from Boston Edison Company to Declarant recorded with the Middlesex South Registry of Deeds in Book 42435, Page 197.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 4 day of March, 2005.

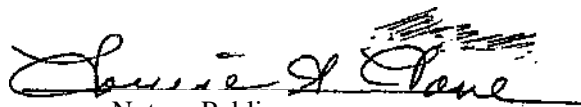
C/S Kessler, LLC
By: Cornerstone Manager, Inc.

By: _____
Its President
Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

March 10, 2005

On the 10 day of 2005 before me the undersigned Notary Public then personally appeared before me e above named Paul E. Tryder as President of Cornerstone Manager, Inc., the Manager of C/S Kessler, LLC, and not individually and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, to be the person whose name is signed on the preceding or attached document and acknowledged to me that he signed it voluntarily for its stated purpose.


Notary Public

My Commission Expires /0

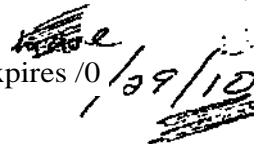


EXHIBIT B

**KESSELER WOODS
NEWTON, MASSACHUSETTS**

DESIGN STANDARDS/SUBMISSION GUIDELINES

No construction will be permitted without the prior written approval of plans and specifications by Design Review Committee.

A. BUILDING

- 1 Each house shall contain a two-car garage. Each house shall contain no less than 3000 square feet of habitable area. For purposes of this paragraph, "habitable area" shall mean gross floor area used for living, sleeping, eating or cooking purposes, including closets and hallways
2. Examples of permitted styles include, but are not limited to: colonials, capes, contemporaries (if compatible with other homes within the benefitted land). Identical or substantially identical house styles on abutting lots or lots which are directly across from each other are discouraged.
3. Houses should be designed to be harmonious with and complement the existing topography. Designs that break up the mass of the house as visible from the street, such as incorporating architectural elements in facade and varying the setbacks, are encouraged.
4. Roofing materials shall be predominately wood, asphalt shingle, tile or slate.
5. Siding materials shall be predominately stone, brick, wood clapboard, stucco, or cedar shingle. No artificial siding material shall be used unless approved by the Design Review Committee. Uses of Synthetic Stucco shall be prohibited.
6. In its review of plans the Declarant assumes no responsibility with respect to the plans compliance to the applicable building code and provisions of the City of Newton Zoning Ordinance. In addition, all plans must comply with all provisions of the law, including, but not limited to the applicable health, environmental, building and zoning laws. The Design Review Committee's approval of plans shall specifically not be evidence of compliance with any health, building, zoning, environmental or other law, statute, ordinance, rule or regulation.

13. SITE

- I. Once the construction of any improvement has begun, it shall continue without unreasonable delay until completion. The exterior of any structure shall not be

left incomplete for more than 90 days from the start of framing. Reasons for a delay shall be limited to force majeure.

2. All utilities between the public right of way and the improvements and structures on the lot shall be underground except those portions thereof required to be located above ground such as junction boxes, meters, etc.
3. There shall be no stockpiling or other open storage of materials on vacant, undeveloped lots.
4. The structure and improvements shall be located in a manner to minimize grade changes and removal of existing vegetation.
5. No tree, greater than eight inches in caliper, falling outside ten feet of the building footprint shall be removed without the prior written approval of the Design Review Committee. Measurement of the tree shall be the diameter of the trunk, 4 1/2 feet above the existing grade at the base of the tree. For multiple trunk trees, the aggregate diameter of such tree shall not be greater than fifteen (15) inches in caliper to be restricted hereunder.
6. After the construction of the house, final grading, sodding, and landscaping shall commence in accordance with the approved plans as seasonal limitations permit. The Declarant reserves the right to approve all landscape plans.
7. There shall be no more than two free standing accessory buildings per lot in addition to any detached garage. No accessory building shall be more than fifteen (15) feet in height.
8. Driveways shall be constructed with a finish material surface acceptable to the developer.